

AMENDED IN SENATE MAY 14, 1998

AMENDED IN SENATE MARCH 30, 1998

SENATE BILL

No. 1683

Introduced by Senators Rosenthal and Burton

February 17, 1998

An act to add Sections 1057.61 and 1057.62 to the Civil Code, and to amend Section 12409 of, and to add Sections 12401.11, 12406.5, and 12413 to, the Insurance Code, relating to title insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 1683, as amended, Rosenthal. Title insurance.

Under existing law, title insurance is defined as insuring, guaranteeing, or indemnifying an owner of real or personal property or the holder of liens or encumbrances or other interests against loss due to liens, encumbrances, or defects in the title to the insured property, defects in liens or encumbrances, or defects in title searches. Under existing law, the Insurance Commissioner regulates the business of title insurance, including the making and use of rates and the enforcement of prohibitions against paying or making certain types of commissions and rebates.

This bill would require, with respect to the purchase, *financing*, or refinancing of residential real property, as defined, a lender or real estate agent or broker to provide a borrower or transferee with a ~~notice~~ *brochure* concerning available title insurance options, as specified. This bill would require the commissioner to develop and provide this ~~notice~~

brochure, as specified, and to ~~post certain information~~ display the brochure on the Internet.

This bill would also require the commissioner to conduct public hearings during 1999, and to submit corresponding reports to the Legislature, pertaining to competition, rates, and illegal rebates in the title insurance industry, and on the status of the title insurance notice requirement. It would also prohibit any title insurer, underwritten title company, or controlled escrow company from placing any employee within the office of any real estate licensee, as defined, and would provide for relevant administrative remedies for any violation of this prohibition. It would also modify the civil penalty provisions for paying or making any unlawful commission or rebate.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1057.61 is added to the Civil
- 2 Code, to read:
- 3 1057.61. (a) In a transaction ~~to finance or refinance~~
- 4 ~~the purchase of residential real property with a loan, the~~
- 5 ~~borrower shall be informed at the earliest practicable~~
- 6 ~~time before an escrow account is opened that title~~
- 7 ~~insurance required in the transaction may be available~~
- 8 ~~from competing title insurers and underwritten title~~
- 9 ~~companies.~~
- 10 (b) ~~If a lender requires a title insurance policy as a part~~
- 11 ~~of a transaction to finance the purchase of residential real~~
- 12 ~~property or to refinance a loan, the lender shall provide~~
- 13 ~~the borrower with the notice developed by the Insurance~~
- 14 ~~Commissioner pursuant to Section 12406.5 of the~~
- 15 ~~Insurance Code. This notice shall be provided by the~~
- 16 ~~lender at the earliest practicable time, but no later than~~
- 17 ~~the date when the lender furnishes the good faith~~
- 18 ~~estimate of costs of obtaining the loan.~~
- 19 (c) ~~In any other transaction involving the purchase of~~
- 20 ~~residential real property where title insurance is~~
- 21 ~~required, but where no lender is involved in the~~

~~transaction~~, the real estate agent or broker for the transferee shall provide the transferee with the ~~notice brochure~~ developed by the Department of Insurance pursuant to Section 12406.5 of the Insurance Code at the earliest practicable time *before an escrow account is opened and title insurance is ordered, in order to inform the transferee that title insurance required in the transaction may be available from competing title insurers and underwritten title companies.*

(b) If a lender requires a title insurance policy as a part of a transaction to finance or refinance a loan on residential real property, which transaction does not involve a real estate agent or broker for the borrower, the lender shall provide the borrower with the brochure developed by the Department of Insurance pursuant to Section 12406.5 of the Insurance Code. The brochure shall be provided by the lender to the borrower at the earliest practicable time before title insurance is ordered in order to inform the borrower that title insurance required in the transaction may be available from competing title insurers and underwritten title companies.

~~(d)~~

(c) As used in this section, the term “residential real property” is limited to transactions involving one to four dwelling units.

SEC. 2. Section 1057.62 is added to the Civil Code, to read:

~~1057.62. (a) If the notice described in Section 12406.5 of the Insurance Code is delivered by the lender to the borrower as required by subdivision (b) of Section 1057.61, the lender, seller, or real estate agent or broker is not required to provide additional information concerning the availability of competing title insurance products, except as otherwise provided by law, and the notice shall be deemed to be adequate to inform the borrower about the opportunity to compare title insurance costs and services.~~

~~(b) If the notice brochure described in Section 12406.5 of the Insurance Code is delivered by the real estate agent or broker to the transferee as required by subdivision (e)~~

(a) of Section 1057.61, the seller or real estate agent or broker is not required to provide additional information, *if any*, concerning the availability of competing title insurance products, except as otherwise provided by law, and the ~~notice~~ *delivery of the brochure* shall be deemed to be adequate to inform the transferee about the opportunity to compare title insurance costs and services.

(e)

(b) *If the brochure described in Section 12406.5 of the Insurance Code is delivered by the lender to the borrower as required by subdivision (b) of Section 1057.61, the lender, seller, or real estate agent or broker is not required to provide additional information, if any, concerning the availability of competing title insurance products, except as otherwise provided by law, and the delivery of the brochure shall be deemed to be adequate to inform the borrower about the opportunity to compare title insurance costs and services.*

(c) Notwithstanding subdivisions (a) and (b), nothing in this section either increases, decreases, or alters the duties, if any, of lenders, sellers, or real estate agents or brokers, under any other law.

SEC. 3. Section 12401.11 is added to the Insurance Code, to read:

12401.11. During the calendar year 1999, the commissioner, *in consultation with the Department of Real Estate*, shall conduct public hearings on title insurance and shall thereafter submit a report to the Legislature by February 1, 2000. The report shall include, but not be limited to, an examination of competition and rates in the title insurance industry, *and the status and effectiveness of efforts to combat illegal rebates pursuant to Article 6.5 (commencing with Section 12414) of Chapter 1 of Part 6 of Division 2,* ~~and the status and effectiveness of efforts to provide consumers with the notice required pursuant to Section 12406.5.~~

SEC. 4. Section 12406.5 is added to the Insurance Code, to read:

12406.5. (a) The commissioner shall develop, publish, and disseminate a ~~notice~~ *brochure* for consumers

1 who are required to buy title insurance ~~in order to obtain~~
2 ~~or refinance a loan or meet the requirements of an escrow~~
3 ~~agreement in~~ as part of a residential real estate
4 transaction. The ~~notice~~ brochure shall inform consumers
5 that competing title insurers and underwritten title
6 companies may offer different costs or services for the
7 title insurance required in the transaction, ~~and~~. The
8 brochure shall also inform consumers about the potential
9 availability of discounts in cases involving first-time
10 buyers, short-term rates if a home is resold in less than a
11 five-year period, concurrent rates if the company is
12 providing both the homeowners' and the lenders' title
13 insurance policies in the transaction, subdivision bulk
14 rates if the property being purchased is in a new
15 subdivision, refinancing discounts, short-term financing
16 rates, and discounts that may be available in other special
17 cases. The brochure shall encourage consumers to
18 contact more than one title insurer or underwritten title
19 company in order to compare costs and services.

20 (b) The ~~notice~~ brochure developed pursuant to
21 subdivision (a) shall include the department's toll-free
22 consumer assistance telephone number and shall invite
23 consumers to call the department if they need assistance
24 ~~in locating and securing title insurance.~~

25 (c) The department shall ~~post title insurance rates~~
26 ~~display the brochure developed pursuant to subdivision~~
27 (a) on its Internet website, and the ~~notice developed~~
28 ~~pursuant to subdivision (a) brochure~~ shall include the
29 department's Internet address and invite consumers to
30 review competing title insurance rates on the Internet.
31 address.

32 (d) The ~~notice~~ brochure developed pursuant to
33 subdivision (a) shall also ~~warn~~ educate consumers about
34 ~~the risk of laws involving~~ unlawful rebates associated with
35 the placement or referral of title insurance and shall
36 encourage consumers to report to the department, to the
37 Department of Real Estate, and to any other appropriate
38 government agencies; any suspected incidents of
39 probable unlawful rebates subject to Article 6.5
40 (commencing with Section 12414).

(e) The ~~notice~~ *brochure* developed pursuant to this section shall be made available to the public at cost, and for reproduction at no cost to any vendor who wishes to publish the ~~notice~~ *brochure* as written, provided any vendor who wishes to publish the ~~notice~~ *brochure* agrees to submit any documents containing the ~~notice~~ *brochure* to the department prior to publication.

SEC. 5. Section 12409 of the Insurance Code is amended to read:

12409. Every title insurer, controlled escrow company, and underwritten title company that pays any commission or that makes any unlawful rebate in violation of this article shall be liable to the people of California for ~~ten~~ *five* thousand dollars ~~(\$10,000) or five (\$5,000) or up to ten~~ times the amount of that commission or unlawful rebate, ~~whichever amount is greater~~, the amount thereof to be recovered by the commissioner pursuant to Section 12976 in addition to any other penalty imposed by law. *In addition to or in lieu of any other penalty that may be imposed under this code, the commissioner may, after a hearing, issue an order to restrict or suspend the certificate of authority of any title insurer or controlled escrow company or the license of any underwritten title company. The commissioner may restrict or suspend the certificate of authority or license on a statewide basis or in specified counties.*

SEC. 6. Section 12413 is added to the Insurance Code, to read:

12413. (a) No title insurer, controlled escrow company, or underwritten title company shall place any employee within the office of any real estate licensee, as defined in Section 10014 of the Business and Professions Code.

(b) Any violation of this section is subject to Sections 12410 and 12411. A violation of this section is not subject to subdivision (b) of Section 12414.25.